

Page 1

1

2 UNITED STATES BANKRUPTCY COURT

**3 | SOUTHERN DISTRICT OF NEW YORK**

4 Case No. 09-50026 (REG)

5 | Adv. Proc. Case No. 11-09409

7 | In the Matter of:

8

**MOTORS LIQUIDATION COMPANY, et al.**

10 f/k/a General Motors Corporation, et al.,

11

## 12 Debtors.

13

15

16                   United States Bank  
17                   One Bowling Green  
18                   New York, New York

19

20 | November 22, 2011

21 | 10 : 00 AM

22

23 | B E F O R E :

24 HON. ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

Page 2

1

2 Adv: 1-11-09409 John Morgenstein vs Motors Liquidation Co. Et  
3 Al Pretrial Conference

4

5 1-09-50026 General Motors Corporation

6 Debtors' 119th Omnibus Objection to Claims (Duplicate Debt  
7 Claims)

8

9 Debtors' 121st Omnibus Objection to Claims (Duplicate Debt  
10 Claims)

11

12 Debtors' 122nd Omnibus Objection to Claims (Duplicate Debt  
13 Claims)

14

15 Debtors' 126th Omnibus Objection to Claims (Duplicate Debt  
16 Claims)

17

18 Debtors' 135th Omnibus Objection to Claims (Eurobond Deutsche  
19 Debt Claims)

20

21 Debtors' 137th Omnibus Objection to Claims (Eurobond Deutsche  
22 Debt Claims)

23

24 Debtors' 140th Omnibus Objection to Claims (Eurobond Deutsche  
25 Debt Claims)

Page 3

1

2       Debtors' 143rd Omnibus Objection to Claims (Eurobond Deutsche  
3       Debt Claims)

4

5       Debtors' 199th Omnibus Objection to Claims (Claims for  
6       Preferred Stock)

7

8       Debtors' 203rd Omnibus Objection to Claims (Duplicate Debt  
9       Claims)

10

11      Debtors' 213th Omnibus Objection to Claims (Duplicate Debt  
12      Claims - Wilmington Trust Bonds)

13

14      242nd Omnibus Objection to Claims (Contingent Co-Liability  
15      Claims)

16

17      252nd Omnibus Objection to Claim(s) Number: filed by Barry N.  
18      Seidel on behalf of Motors Liquidation Company GUC Trust.

19

20      253rd Omnibus Objection to Claim(s) Number filed by Barry N.  
21      Seidel on behalf of Motors Liquidation Company GUC Trust.

22

23      254th Omnibus Objection to Claim(s) Number filed by Barry N.  
24      Seidel on behalf of Motors Liquidation Company GUC Trust.

25

Page 4

1 255th Omnibus Objection to Claim(s) Number filed by Barry N.

2 Seidel on behalf of Motors Liquidation Company GUC Trust

3

4 256th Omnibus Objection to Claim(s) Number filed by Barry N.

5 Seidel on behalf of Motors Liquidation Company GUC Trust

6

7 Hearing on Motion by Dr. Terrie Sizemore to GM's Enforcing 363

8 Sale Order - To Be Adjourned

9

10 Reorganized Debtor (I) Supplemental Claim Objection and (II)  
11 Motion to enforce the Plan Injunction and Automatic Stay and to  
12 Enjoin Chartis U.S. from Continuing to Retain More than \$20  
13 Million It Improperly Seized from the Reorganized Debtors -  
14 Status Conference.

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Ellen S. Kolman

Page 5

1

2 A P P E A R A N C E S :

3 WEIL GOTSHAL & MANGES LLP

4 Attorneys for the Post-Effective Date Debtors and Motors

5 Liquidation GUC Trust

6 767 Fifth Avenue

7 New York, NY 10153

8

9 BY: JOSEPH H. SMOLINSKY, ESQ.

10

11

12 TOGUT, SEGAL & SEGAL LLP

13 Attorneys for Motors Liquidation Counsel, a/k/a General

14 Motors

15 One Penn Plaza

16 New York, NY 10119

17

18 BY: SCOTT E. RATNER, ESQ.

19

20

21

22

23

24

25

Page 6

1

2 DICKSTEIN SHAPIRO LLP

3 Attorneys for the Motors Liquidation GUC Trust, Successor

4 to the Official Committee of Unsecured Creditors of Old

5 GM

6 1633 Broadway

7 New York, NY 10019

8

9 BY: SHAYA M. BERGER, ESQ.

10

11

12 CLIMACO, WILCOX, PECA, TARANTINO & GAROFOLI CO., L.P.A.

13 Attorneys for Morgenstein Group

14 55 Public Square

15 Cleveland, OH

16

17 BY: JOHN A. PECA, ESQ.

18

19

20

21

22

23

24

25

Page 7

1

2 NEBLETT, BEARD & ARSENAULT

3 Attorneys for Morgenstein Group

4 2220 Bonaventure Court

5 P.O. Box 1190

6 Alexandria, Louisiana 71309

7

8 BY: SRIVATSA V. GUPTA, ESQ.

9

10

11 MARK SCHLACHET LAW FIRM

12 Attorney for Morgenstein Group

13 3637 Green Road

14 Beachwood, OH 44122

15

16 BY: MARK SCHLACHET, ESQ.

17

18

19 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

20 Attorneys for Morgenstein Group

21 270 Madison Avenue

22 New York, New York 10016

23

24 BY: MICHAEL JAFFE, ESQ.

25

Page 8

1

2 ZEICHNER ELLMAN & KRAUSE LLP

3 Attorneys for Chartis Entities

4 575 Lexington Avenue

5 New York, NY 10022

6

7 BY: BRYAN D. LEINBACH, ESQ.

8

9

10 ALSO APPEARING TELEPHONICALLY

11 PATRICIA BENJAMIN appearing on behalf of Cecil Benjamin

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 9

1 P R O C E E D I N G S

2 THE COURT: Folks, it's my impression that the General  
3 Motors matters that were scheduled for 9:45 after the Park East  
4 matters are going to move fairly quickly. Did I see Mr.  
5 Smolinsky there? Do you think that's likely to be so, Mr.  
6 Smolinsky?

7 MR. SMOLINSKY: Yes, Your Honor.

8 THE COURT: Come on up then, please.

9 THE CLERK: All parties, Your Honor?

10 THE COURT: On GM matters, yes.

11 MR. SMOLINSKY: Thank you, Your Honor.

12 COURTCALL OPERATOR: Excuse me, Your Honor?

13 THE COURT: Yes.

14 COURTCALL OPERATOR: (Indiscernible) scheduled  
15 Nicholas Martin to appear, he has not made an appearance at  
16 CourtCall.

17 THE COURT: Nicholas Martin?

18 COURTCALL OPERATOR: Yes, Your Honor.

19 THE COURT: On GM?

20 COURTCALL OPERATOR: Yes.

21 THE COURT: Okay. That was scheduled for 9:45. Am I  
22 correct Mr. -- Madam CourtCall?

23 COURTCALL OPERATOR: Yes, Your Honor.

24 THE COURT: All right. It's now 10 o'clock. Keep  
25 your line open but we're going to proceed anyway.

Page 10

1 COURTCALL OPERATOR: Okay.

2 THE COURT: Thank you.

3 COURTCALL OPERATOR: You're welcome.

4 THE COURT: Mr. Smolinsky, go ahead, please.

5 MR. SMOLINSKY: Thank you, Your Honor. Good morning,  
6 Joe Smolinsky from Weil Gotshal & Manges for the post-effective  
7 date debtors as well as the Motors Liquidation Company GUC  
8 Trust. I think we can go through the calendar very quickly  
9 today.

10 The first matter is a pre-trial conference. This  
11 involves an adversary proceeding filed by, what I'll call the  
12 Morganstine (sic) -- Morgenstein Group. This is a class action  
13 complaint that was filed seeking to partially revoke the  
14 confirmation order and seek to file late claims for a class  
15 action arising from product defect.

16 Your Honor, we extended the plaintiffs' time to object  
17 to our motion to dismiss the complaint until December 15th. We  
18 did have a pre-trial scheduled for today on the adversary  
19 proceeding and thought it might be best to go forward in case  
20 Your Honor had any preliminary views. From our perspective, we  
21 think it's a shame that the estate should be spending its  
22 resources defending this action. There is no partial  
23 revocation of the confirmation order. The complaint seems to  
24 ignore the prior orders of this court relating to class  
25 certification and class claims and we don't see any basis for

Page 11

1 excusable neglect certainly in the context of a class action.  
2 So, we'll move forward as quickly as we can with the motion to  
3 dismiss but wanted to give Your Honor an opportunity to hear  
4 preliminary what this case is about.

5 THE COURT: All right. Is counsel for your opponent  
6 here?

7 MR. SCHLACHET: And Your Honor, Mark Schlachet  
8 representing the Morgenstein Group.

9 THE COURT: Okay. Shaslay (ph.)?

10 MR. SCHLACHET: Schlachet, Your Honor.

11 THE COURT: Could you spell that please?

12 MR. SCHLACHET: S-C-H-L-A-C-H-E-T.

13 THE COURT: Okay. Mr. Schlachet.

14 MR. SCHLACHET: And with me, Your Honor, I have my  
15 cocounsel who I'll ask to introduce themselves because I don't  
16 want to get their names wrong. If I may, Your Honor?

17 THE COURT: Yes. Come to microphone, please,  
18 gentlemen.

19 MR. PECA: Good morning, Your Honor. John Peca,  
20 P-E-C-A from the Climaco law firm in Cleveland, Ohio.

21 THE COURT: Okay.

22 MR. JAFFE: Good morning, Your Honor. Michael Jaffe  
23 from Wolf Haldenstein Adler Freeman & Herz from here in New  
24 York.

25 THE COURT: Okay.

Page 12

1 MR. GUPTA: Good morning, Your Honor. Srivatsa Gupta  
2 with Neblett, Beard and Arsenault in Alexandria, Louisiana.

3 THE COURT: Okay. Thank you.

4 MR. SCHLACHET: Good morning, Your Honor. Your Honor,  
5 just briefly I note that Mr. Smolinsky referenced class action  
6 rulings of Your Honor in the past on other cases. The shame of  
7 the estate to spend money. The one thing that Mr. Smolinsky  
8 didn't mention is this is an action under 1144 for what we'll  
9 call anti-injunctive type relief and those are the issues.

10 THE COURT: 1144 of the Bankruptcy Code?

11 MR. SCHLACHET: Indeed, Your Honor.

12 THE COURT: Go on. Go on, please.

13 MR. SCHLACHET: The issues of 1144 of the Bankruptcy  
14 Code, Your Honor, are the issues that we believe are germane to  
15 Your Honor's initial interaction with the case. Those issues,  
16 Your Honor, are serious issues and issues which Your Honor will  
17 bring this court's considerable expertise to bear. But there  
18 are a proliferation of issues that have been raised in the  
19 motion to dismiss and by way of streamlining, Your Honor, I  
20 just wanted to take a moment to explain what we view as the  
21 basic layout of the motion to dismiss and why some of the  
22 issues may be premature.

23 THE COURT: All right. We're talking about -- I asked  
24 the question because I had understood the only grounds for  
25 revocation and of a discharge under 1144 were fraud.

Page 13

1 MR. SCHLACHET: Indeed, they are, Your Honor.

2 THE COURT: And you're alleging fraud?

3 MR. SCHLACHET: We're alleging fraud on the court.

4 THE COURT: All right. Go on, please.

5 MR. SCHLACHET: Your Honor, in this case and I'll --  
6 in light of Your Honor's question, I'll explain the background  
7 of the case just briefly; maybe a minute, a minute and a half,  
8 if I may.

9 In the General Motors portfolio of automobiles, Your  
10 Honor, it was the Chevrolet Impala which folks are very  
11 familiar with.

12 THE COURT: I learned to drive on a '62 Impala.

13 MR. SCHLACHET: I got my first car, a '58 Impala.

14 THE COURT: Okay.

15 MR. SCHLACHET: Your Honor, the spindle rod of the  
16 Impalas in 2007, or thereabouts, were defective. Impala sent  
17 out a notice to its fleet users of those Impalas, particular  
18 fleet users who had a police package. They did not disclose  
19 the defect --

20 THE COURT: Police package you mean made them  
21 particular suited for police department usage?

22 MR. SCHLACHET: Yes, Your Honor.

23 THE COURT: Um-hum.

24 MR. SCHLACHET: They did not disclose the defect or  
25 provide relief to the other Impala owners who had Impalas

Page 14

1 without the police package.

2 THE COURT: When did this take place?

3 MR. SCHLACHET: This took place in 2008 that the  
4 defect was discovered evidentially by --

5 THE COURT: Before GM's Chapter 11 frame.

6 MR. SCHLACHET: Yes, Your Honor.

7 THE COURT: On June 1st, 2009.

8 MR. SCHLACHET: Yes.

9 THE COURT: Go on.

10 MR. SCHLACHET: And because they didn't disclose it to  
11 others until July of this year when somebody filed a case in  
12 the Eastern District of Michigan, other Impala owners were  
13 ignorant of the defect. At the time that the Michigan case was  
14 filed, certain owners came to Mr. Peca and raised with him the  
15 fact that they had heard that an action was filed due to a  
16 defect in the spindle rod causing un -- premature tire wear.

17 Mr. Peca's firm engaged an expert to determine whether  
18 the police vehicles and the nonpolice vehicles were materially  
19 substantially identical and the expert came back and said they  
20 were. At which time, his firm sent a letter to New GM asking  
21 if the affected Impala owners could obtain relief from New GM.

22 Sometime thereafter, New GM wrote a letter then  
23 indicated that under this Court's order of sale, Section 363,  
24 they were not responsible for product defects but only for  
25 maintaining the warranty program as to warrantable defects.

Page 15

1           They directed Mr. Peca's firm to Old GM. At that  
2 point, Mr. Peca called me which was about one week or two weeks  
3 before this complaint was filed and as I looked at the  
4 complaint, sure enough in order to -- in order to comport with  
5 the very strictly construed 188 80-day deadline for filing a  
6 Section 1144 complaint based on the fact that GM did not list  
7 these creditors in their schedules, they did not disclose the  
8 creditors to the Court in the disclosure statement and as a  
9 result they obtained a confirmation order on what we believe  
10 are false pretenses because we do not believe that had this  
11 Court known about this entire class, we believe it's about  
12 450,000 vehicles, this entire class of creditors, this Court  
13 would have seen that, one, there was a failure to meet the  
14 fiduciary standards of 1107, a failure to meet the good faith  
15 standards of 1123 and, therefore, obtaining the confirmation  
16 order on what we believe were false pretenses.

17           So, we filed the action on what amounts to the  
18 calendar, 181st day, but because the 179th and 180th day fell  
19 on the weekend under Federal Rule of Civil Procedure 6(b)  
20 applicable to these proceedings, we were within the rule by a  
21 hair.

22           The important thing that I want to stress, Your Honor,  
23 is just two things. One, I believe Mr. Peca and his firm were  
24 diligent and will account for their time. There was no  
25 prejudice during the lapse of time between July and when we

Page 16

1 filed the case to any party and the debtors' motion for -- to  
2 dismiss, as Mr. Smolinsky just encapsulated, doesn't really --  
3 except the word "partial revocation" address the complaint  
4 itself as to issues that are presently before the Court.

5 Presently before the Court is whether that complaint  
6 states a claim if all the inferences on the plausible  
7 allegations, not just conclusory presumptuous all -- the  
8 plausible allegations. If those allegations aren't true  
9 whether the complaint states a plausible case for relief is the  
10 issue on a motion to dismiss.

11 There are -- we believe there are six issues, major  
12 issues, and a host of collateral issues raised in the motion to  
13 dismiss.

14 The issues of excusable neglect to file a late claim  
15 is not before this Court at this time.

16 The issue of striking the class allegations, except in  
17 rare circumstances would not be appropriate for a motion to be  
18 under 12(b) (6). Those circumstances are not present in this  
19 case. This is not a case which on its face warrants summary  
20 rejection by this Court. It may down the road and this Court  
21 may impose -- and I've read Your Honor's rather prodigious  
22 decisions, particularly the Aparte (ph.) decision, we are fully  
23 aware that this Court will superimpose bankruptcy  
24 considerations on the ordinary Rule 23 criteria. But at this  
25 point in time, on a 12(b) (6) motion, and there's much authority

Page 17

1 to this effect, this is not the time to address that.

2 And addressing the notion of the criteria under Rule  
3 23(b) (3) which requires a predominance of common issues over  
4 individual issues, that is a certification issue pure and  
5 simple. That would not be, in this case, ever. So, many of  
6 the issues that are raised -- but there are meaty issues in the  
7 case. The first is whether a partial revocation, as the debtor  
8 calls it, what we call a limited revocation with this Court  
9 exercising its authority under 1144(1) to make such conditions  
10 as will assure no prejudice to those who relied on the  
11 confirmation order, that is a legitimate issue before the  
12 Court.

13 The issue of whether -- of whether we have pled  
14 nonconclusory allegations which will support a claim for fraud  
15 on the Court, that is an issue presently before the Court which  
16 needs to be addressed. The issue of equitable mootness is an  
17 issue before the Court which needs to be addressed on a  
18 12(b) (6) motion. Those issues are major meaty issues for Your  
19 Honor's consideration at this time.

20 We suggest, Your Honor, in your discretion that it  
21 would be better to take the premature issues, three of them,  
22 which will only increase the ruelful expense to the estate.  
23 Take those and push them aside until their time comes up in the  
24 due process of law.

25 THE COURT: What do you perceive to be the premature

Page 18

1 issues?

2 MR. SCHLACHET: The --

3 THE COURT: The Pioneer issue of late proof of claim?

4 MR. SCHLACHET: Yes.

5 THE COURT: Suitability for class action? And the  
6 adversary proceeding is just to revoke the dischar -- to revoke  
7 the confirmation order?

8 MR. SCHLACHET: That is correct, Your Honor.

9 THE COURT: And you articulated or I thought you were  
10 about to articulate three things that you thought were  
11 premature on the debtors' 12(b)(6). One, Pioneer. The second,  
12 what, the class action allegations --

13 MR. SCHLACHET: Striking the class action allegations.

14 THE COURT: And what was the third -- or was there a  
15 third?

16 MR. SCHLACHET: The Rule 23(b)(3) criteria. Those  
17 are -- those two last issues are under (V).

18 THE COURT: Well, 23(b)(3) deals with predominance of  
19 common issues in it being the best way to deal with a class  
20 action controversy.

21 MR. SCHLACHET: Yes, Your Honor.

22 THE COURT: And you're saying that what I should do is  
23 separate the underlying confirmation from the class action  
24 issues?

25 MR. SCHLACHET: Correct.

Page 19

1 THE COURT: And have you filed a motion for class  
2 certification yet?

3 MR. SCHLACHET: We have not, Your Honor.

4 THE COURT: Is there a reason why you haven't?

5 MR. SCHLACHET: The debtor responded with a motion to  
6 dismiss and I was -- I was -- we were within what we regard as  
7 the earliest time practicable and we, frankly, never seriously  
8 considered a motion for class certification. We do believe  
9 that a motion for class certification based on what we see  
10 emerging from the motion to dismiss would require appropriately  
11 some class discovery. That discovery will go --

12 THE COURT: Class discovery before or after you've  
13 made your motion?

14 MR. SCHLACHET: Class discovery before we've made our  
15 motion.

16 THE COURT: Um-hum. Okay, Mr. Schlachet.

17 MR. SCHLACHET: Yes, Your Honor.

18 THE COURT: Am I pronouncing it wrong? Forgive me.

19 I'm thinking and digesting here because when I've  
20 dealt with other class proofs of claim, they were all timely  
21 whatever there other strengths and weaknesses might be.

22 Okay. Other thoughts before I give Mr. Smolinsky a  
23 chance to respond?

24 MR. SCHLACHET: I don't think so, Your Honor.

25 THE COURT: Okay. Mr. Smolinsky.

Page 20

1 MR. SCHLACHET: Thank you, Your Honor.

2 MR. SMOLINSKY: I hate to say this is nonsense, but  
3 this is nonsense. The cars that we're talking about here were  
4 manufactured and sold between 2007 and 2008. Those are the two  
5 model years that are the prime subject of the action.

6 The police package is a completely different car and  
7 that could be established later but that's a question of fact.  
8 What remains is the fact that we're not aware of one proof of  
9 claim being timely filed with respect to this product defect.  
10 Your Honor has heard before this court many claims asserting  
11 product defects. Of this 450,000 potential claimants, not a  
12 one.

13 I just replaced tires on my 2010 car. This is 2007,  
14 2008 and to file a -- on the last day of a motion to revoke a  
15 discharge, which I think -- we didn't get a discharge, so it's  
16 not really an action --

17 THE COURT: Oh, was it a motion to -- I thought it was  
18 a motion to irrevocate the confirmation order rather than the  
19 discharge.

20 MR. SMOLINSKY: It wasn't clear. There was some  
21 language in the complaint and maybe they'll fine tune that to  
22 address that issue but we did brief that on a motion to  
23 dismiss.

24 THE COURT: The point is a liquidating 11 so there  
25 'aint a discharge.

Page 21

1 MR. SMOLINSKY: It's a liquidating 11; that's right,  
2 Your Honor.

3 THE COURT: Yes. Go on, please.

4 MR. SMOLINSKY: So, to file it on the 181st day  
5 following confirmation of a plan over three years after the bar  
6 date, doesn't make sense. If someone had complained to counsel  
7 about a defective car you'd think that they would have known --  
8 known it before four years after the car was purchased.

9 So, I don't want to get into the facts. I don't think  
10 we need to today. I know your calendar is tight. But we would  
11 like to address this in as few hearings as possible and not  
12 drag this out over a matter of months. So, if Your Honor  
13 believes that a motion for class certification is necessary to  
14 get full and final relief, we would want that filed as soon as  
15 possible and consolidate that so we can deal -- address this  
16 complaint in one shot.

17 THE COURT: All right. Everybody had a chance to  
18 speak their piece?

19 Gentlemen, this, of course, is only a status  
20 conference and I'm not in a position nor should I do anything  
21 more than simply manage the litigation of this. Mr. Smolinsky,  
22 I'm going to permit you to raise as many or as few issues as  
23 you choose in your motion to dismiss to which your opponents  
24 will respond. And if they are of the mind when they respond to  
25 say that some or all of the issues that you raise aren't yet

Page 22

1 ripe, they're free to do it at that time as to which you're  
2 going to have to reply.

3 It's premature, Mr. Smolinsky for me to determine the  
4 extent, if any, to which their claims are frivolous or  
5 inappropriate. If you're making the motion after I've heard  
6 your opponent's views, I'll rule on it.

7 For the time being, there will be no discovery but  
8 that's without prejudice for it -- to a request that I permit  
9 discovery on some more issues after I have a better handle as  
10 to the nature of the controversy what is being asked for, it's  
11 bases in law and I'm in a better position to evaluate case  
12 management issues going forward.

13 For now, what I need is for both people to lay out  
14 their legal positions in writing and not just verbally so I can  
15 manage it effectively going forward. Mr. Smolinsky?

16 MR. SMOLINSKY: Your Honor, if I may, we extended the  
17 plaintiffs' time to respond to our motion to dismiss until  
18 December 15th. Perhaps -- what we'd like to do, if Your Honor  
19 is okay with it, is to review the transcript and see whether  
20 there are any -- any revisions to the motion to dismiss that  
21 may be appropriate to refine in view of this hearing, the  
22 issues so that we can tackle as much as we can on the return  
23 date of the motion. So, perhaps giving us until December 7th  
24 to -- if it's necessary; I don't think it is but if it is to  
25 amend the motion. In the meantime, we could extend the

Page 23

1 defendant's time to respond one week to the 21st. And we'd  
2 look to have a hearing on this in late January.

3 THE COURT: Did you have a dialogue with your  
4 opponents as to whether they wanted more time to respond to  
5 your motion to dismiss and what the timing would be for a  
6 replay on your side?

7 MR. SMOLINSKY: We did, Your Honor. We understood  
8 that there were some significant issues raised in our papers.  
9 They contacted us and asked for more time. We always want to  
10 give Your Honor at least a week to read reply papers. So, we  
11 were looking initially at a hearing in early January and that's  
12 why we picked December 15th to give us a week to respond. But  
13 in speaking to my litigation partner, he's not available till  
14 the end of January anyway so perhaps we can use this time to  
15 our advantage to try to resolve as many issues at that motion  
16 as we can.

17 THE COURT: Well, without prejudging the merits of the  
18 issues in any way, it seems to me that if the controversy is of  
19 the type that was described to me verbally, it will benefit  
20 from both more time for your opponent to respond and for a time  
21 for you to reply.

22 Mr. Schlachet, do you want to be heard on his request  
23 that he be permitted to update his motion if he chooses to do  
24 so?

25 MR. SCHLACHET: Your Honor, if I had a concept of what

Page 24

1 Mr. Smolinsky -- Smolinsky has in mind with respect to a  
2 revision of the motion to dismiss, I could then confer with my  
3 cocounsel just very briefly and see what their immediate  
4 reaction is to it. I don't know if Mr. Smolinsky is suggesting  
5 that there may be issues that can be paired or if there -- if  
6 he's suggesting there are going to be issues that could be  
7 added. If I knew that, I certainly would be responsive to the  
8 Court.

9 THE COURT: Well, since I was a litigator for about  
10 two decades before I went into the bankruptcy business, I can  
11 speculate that he isn't asking me for permission to drop claims  
12 down the road that he's more interested in seeing whether  
13 anything that you raise causes him additional concerns. He  
14 could have dropped contentions with a one sentence letter. So,  
15 I think that you're on notice that he may wish to broaden his  
16 concerns rather than narrow them. I may be speculating  
17 inappropriately but I was a litigator and a bankruptcy  
18 litigator for thirty years before I came over to the bench.

19 MR. SCHLACHET: Well, Your Honor, if we had -- if we  
20 had new claims migrating into this action --

21 THE COURT: But he's not talking about new claims.  
22 He's talking about new defenses. That's what a Rule 12(b)  
23 motion is. He's already got notice of what your claims are  
24 except he's trying to figure out whether he needs to massage  
25 his motion or not and I'm asked to decide whether I should

Page 25

1 adjust this schedule to let both its sides get out there best  
2 legal positions early rather than later.

3 MR. SCHLACHET: Well, what I would say, Your Honor, is  
4 why don't we -- if you're asking me subject to my cocounsel's  
5 comments why don't we add -- this is the 22nd. If we could get  
6 Mr. Smolinsky's revised motion to dismiss, say in a week  
7 instead of two weeks, it would be better for me personally  
8 because I'm going to be in California -- or in Florida and  
9 California -- I'm supposed to be there in February and March,  
10 so I will have to fly back unless the hearing is set in  
11 January, which I will do; it's not a problem. But if we could  
12 get the revisions within a week then I would say that we could  
13 possibly get our response -- oh, then, he wants to reply --  
14 then he wants to reply. So, we have December 15th, if we can  
15 get it in a week, we would shoot for December 15th.

16 THE COURT: Forgive me, Mr. Schlachet, I'm not going  
17 to allow my courtroom to be used as the place for let's make a  
18 deal. My narrow question was whether you opposed or not. I  
19 think I'm going to take it out of the consensual range. I'm  
20 just going to tell you guys what we're going to do.

21 We're now two days before Thanksgiving. I'm not going  
22 to tell any lawyer in my courtroom that he, she or it has to do  
23 stuff over a Thanksgiving weekend and respond in a week. I'm  
24 going to give the estate side, call it Old GM, call it the GUC  
25 Trust, whatever, a reasonable time to update its motion if it

Page 26

1 chooses to or to inform you and your allies that the estate  
2 elects not to do it. The parties are also authorized to give  
3 your side a reasonable amount of time to respond and to allow  
4 Old GM and the GUC Trust a reasonable time to reply and to get  
5 a date for hearing upon which all parties can appear without  
6 significant inconvenience and that allows me no less than a  
7 business week to read the papers before oral argument.

8 I'm not going to micromanage that process beyond that  
9 which I just stated. Instead, you're to prepare a stip or  
10 consent order that papers of scheduling deal, without prejudice  
11 to your underlying rights and positions in any way, shape or  
12 form. Unless it's unreasonable, I will so order it and you can  
13 rely upon the fact that if both sides have agreed to it, it's  
14 likely to be reasonable.

15 I do have to caution you all that I have other matters  
16 on my plate, both in the GM case and in the other twenty  
17 megacases that I have in my docket and the other hundred  
18 Chapter 11 cases that I have in my docket and the other 2,000  
19 other bankruptcy cases that I have in my docket, so, I don't  
20 want anybody to be a jerk about putting his or her or its  
21 opponent under pressure for getting this done because you're  
22 going to have to accommodate those other needs and concerns  
23 anyway.

24 MR. SMOLINSKY: Thank you, Your Honor.

25 THE COURT: Okay. Anything else? Either side.

Page 27

1 (No response)

2 THE COURT: Okay. Mr. Smolinsky, next matter on your  
3 calendar, please. Those who are here just on this matter are  
4 free to leave, if they wish.

5 MR. SMOLINSKY: The next ten matters on the calendar  
6 all relate to objections filed, omnibus objections, to  
7 duplicate debt claims. These are claims that were filed by  
8 bondholders seeking to obtain recoveries outside of our plan.  
9 As Your Honor's aware, under our plan we allowed claims on  
10 behalf of all of the fiscal paying agents and venture trustees  
11 and we've made distributions on account of those claims.

12 As Your Honor is aware, we've been working through  
13 these motions. This should be the last set of duplicate debt  
14 claims that are out there except for claims that either  
15 partially or totally overlap the Nova Scotia litigation that  
16 we've left on the side. So, if I may, I'd like to go through  
17 each one individually and see if there are responses beyond  
18 those that were attached to the responsive pleadings.

19 The first is the 119th omnibus objections to claim.  
20 There was one remaining response of Johann Conrad Von  
21 Waldhausen, W-A-L-D-T-H-A-U-S-E-N. In our binder, we have  
22 included a letter sent in by the claimant. We're not sure what  
23 he's seeking beyond what I described as distributions on  
24 account of his claims.

25 THE COURT: Okay. Anybody want to be heard in

Page 28

1 opposition?

2 (No response)

3 THE COURT: Okay. Now, Mr. Smolinsky, I need to  
4 apologize to you. I think you explained to me that this was a  
5 simple expunge for what reason?

6 MR. SMOLINSKY: They filed claims on behalf of bonds  
7 and --

8 THE COURT: But we're already covered by a proof of  
9 claim by an indentured trustee.

10 MR. SMOLINSKY: Correct. Or a claim allowed under the  
11 plan on behalf of a fiscal agent, on behalf of the entire issue  
12 of debt.

13 THE COURT: Okay. It was the latter part that  
14 confused me.

15 MR. SMOLINSKY: And we did file, just for the record,  
16 an omnibus reply with respect to all ten of these claims.

17 THE COURT: Right. Of course. That's granted.

18 MR. SMOLINSKY: Thank you. The next is 121st omnibus  
19 objection. This is an informal objection by Nicholas Martin.  
20 That's the gentleman who the CourtCall representative said did  
21 not dial in.

22 THE COURT: Okay. Pause, please.

23 CourtCall, have you now heard from Mr. Martin?

24 COURTCALL OPERATOR: No, Your Honor.

25 THE COURT: Okay. Am I right, Mr. Smolinsky, that

Page 29

1 this is basically the same issue?

2 MR. SMOLINSKY: Yes. I could read his letter. It's  
3 two sentences.

4 THE COURT: I beg your pardon?

5 MR. SMOLINSKY: I could read his letter, Your Honor.  
6 It's two sentences.

7 THE COURT: If it's two sentences, why don't you do  
8 that?

9 MR. SMOLINSKY: "Dear Sirs. I am acting on claim  
10 number 1476485 regarding General Motors Liquidation Company. I  
11 have suffered two strokes and am unable to attend the United  
12 States bankruptcy hearing court Southern District of New York.  
13 If the Court finds that my petition is valid, please send me my  
14 proceeds. Thank you."

15 THE COURT: Okay. And if I heard you right, as a  
16 bondholder, the indenture trustee went to bat for him, right?

17 MR. SMOLINSKY: If he was a debtholder of record, he  
18 would have received his distributions.

19 THE COURT: Fine. Okay. Your motion is granted.

20 MR. SMOLINSKY: Thank you.

21 The third item, Debtors' 122nd omnibus objections to  
22 claim, this is his one response by Arthur Staple (ph.); same  
23 arguments, Your Honor.

24 THE COURT: And the same ruling.

25 MR. SMOLINSKY: The next matter is the 126th, omnibus

Page 30

1 objection. One response by James E. Lockhart (ph.).

2 THE COURT: Okay. Anybody here on behalf of Mr.  
3 Lockhart? Same ruling.

4 MR. SMOLINSKY: Debtors' 135th omnibus objections to  
5 claim; one informal response of D. Andreas Hess (ph.).

6 THE COURT: Same ruling.

7 MR. SMOLINSKY: Debtors' 137th omnibus objection.  
8 There's one objection, Garhard Vote (ph.). This is a response  
9 that was submitted in German. We had our German office reach  
10 out to speak to Mr. Vote unsuccessfully and attached to our  
11 reply is a translation of the letter basically seeking the same  
12 relief.

13 THE COURT: Same ruling.

14 MR. SMOLINSKY: And number 8, debtors' 140 -- I'm  
15 sorry; I missed one. Debtors' 140th omnibus objection. This  
16 is one response by Laborio DeSalvo (ph.). Mr. DeSalvo has  
17 submitted numerous letters. Hard to tell whether they're  
18 substantive relief but he's filed several letters which are  
19 attached to the pleadings.

20 THE COURT: Same ruling.

21 MR. SMOLINSKY: Number 8, debtors' 143rd omnibus  
22 objections. One response by Paul Schwake, S-C-H-W-A-K-E.

23 THE COURT: Same ruling.

24 MR. SMOLINSKY: Debtors' 203rd omnibus objection. One  
25 response filed by Alma G. Haller, H-A-L-L-E-R.

Page 31

1 THE COURT: Same.

2 MR. SMOLINSKY: Last one, Your Honor, debtors' 213th  
3 omnibus objection. One response filed by Cecil a. Benjamin.

4 THE COURT: All right. Same ruling.

5 MR. SMOLINSKY: Okay.

6 THE COURT: Wait, just pause please. Yes, ma'am, you  
7 want to come up, please?

8 MS. BENJAMIN: I'm --

9 THE COURT: Come to a microphone so that what you say  
10 can be heard.

11 MS. BENJAMIN: I'm sorry. I'm Patricia A. Benjamin.

12 THE COURT: Yes, Ms. Benjamin.

13 MS. BENJAMIN: I'm representing my father, Cecil A.  
14 Benjamin.

15 THE COURT: Okay. That's a little irregular but I'm  
16 going to allow you to be heard.

17 MS. BENJAMIN: He's right here. If you want to  
18 speak --

19 THE COURT: No, that's fine. If you want to speak for  
20 him, tell me what's on his mind and yours and I'll decide down  
21 the road if it involves anything that would cause me to need to  
22 hear from him personally.

23 MS. BENJAMIN: Okay. Thank you, Your Honor.

24 THE COURT: Pull the microphone close to you, please,  
25 Ms. Benjamin.

Page 32

1 MS. BENJAMIN: Thank you, Your Honor, Mr. Gerber.

2 This is a letter explaining my position that the claim is  
3 individual bondholder to the bond that is part of my father's  
4 retirement. There should be no duplicative claim to his  
5 personal holding in GM stock or bond. It's a bond which is  
6 secured. It represents part of my father's retirement savings.  
7 He filed a legitimate claim on an omnibus response for the  
8 property of the GM bond for 50,000 which matured prior to the  
9 plan. There's no legitimate claim or no notice of a claim was  
10 filed by GUC Trust, Millington Trust (sic).

11 The basis of this alleged claim is erroneous. The  
12 bond matured on January 15th, 2011. He has not been paid the  
13 face value. I have an attachment which I would like to submit  
14 to the Court.

15 THE COURT: You may do that, Ms. Benjamin, and then  
16 you can finish your remarks but I will then need to better  
17 explain what's happening with your dad's claim.

18 MS. BENJAMIN: Sure. Okay.

19 The bank informed us of the GM bankruptcy petition on  
20 Chapter 11. We filed a claim as creditor directly with the  
21 court and not with the trust or the bank. The following was  
22 listed on the proof of claim one produced by the court and the  
23 claim includes a principal and -- well, principal and interest,

24 "I am not a creditor of GUC or a trust or Wilmington  
25 Trust the bank of MLC and the bond is not listed as such.

Page 33

1 Furthermore, the bond is not listed as a Eurobond. Please  
2 review this bond separately as an individual debtholder bond.  
3 I have received no recompense, so far, for this particular  
4 bond. This is a Fifth Amendment property right and a lawful  
5 taking. It was set to mature on January 15th, 2011 in full  
6 prior to the plan. It is not a Eurobond. I did not consent to  
7 an exchange of conversion of a bond to a Eurobond. I was not  
8 given proper notice to anything of the contrary. Therefore,  
9 individual bondholders filed a proof of claim; they should  
10 receive a distribution bond to the extent that they have proof  
11 as holders of the record prior to the plan. Mr. Cecil  
12 Benjamin's proof of claim is ECF No. 9623. The Wilmington  
13 Trust bond does not have a legitimate debt claim for Mr.  
14 Benjamin's personal property and retirement money in the form  
15 of the GM bond. The responding parties are holders of record  
16 and have provided documentation. The claim was made prior to  
17 the effective date of the plan.

18 "Cecil Benjamin has already filed a response to the  
19 omnibus objection. For Mr. Benjamin's claim is not duplicate  
20 of the GUC Trust or Wilmington Trust claim. He is unaware of  
21 their interest and has not confirmed that any global's proof of  
22 the claim filed by the applicable indentured trustee. These  
23 parties acknowledge Mr. Benjamin's response which is dated  
24 March 2nd, 2011."

25 The response simply says -- states that he received

Page 34

1 information from the Motor Liquidating Company of the  
2 duplication from Wilmington Trust which was alleged and is  
3 false and erroneous because the bond is registered in his name.  
4 There were two errors of misclaim. Firstly, the bond CUSIP is  
5 370442-BB-0 was purchased by Mr. Benjamin on July 17th, 2008.  
6 Secondly, the bond matured on January 15th, 2011 and he has not  
7 received -- been paid its face value which is 50,000 dollars.

8 He's enclosed a documentation and a confirmation  
9 letter. He has submitted the administrative form to the Motor  
10 Liquidation Company on February 10th, 2011. The address is 105  
11 Maxess Road, Melville, New York, 11747, case number 09-50026-  
12 reg. He is requesting full compensation for the value of this  
13 bond. He wanted them to please respond as soon as possible and  
14 he gave his phone number.

15 THE COURT: Okay. Thank you. I understand now.

16 MS. BENJAMIN: Okay.

17 THE COURT: Mr. Smolinsky -- you stay up where you  
18 are, Ms. Benjamin.

19 MS. BENJAMIN: Okay.

20 THE COURT: Mr. Smolinsky, am I correct that as far as  
21 you know Wilmington Trust is the indentured trustee on the  
22 issue of bonds for which Mr. Benjamin is a bondholder?

23 MR. SMOLINSKY: Yes, Your Honor. If it's not a  
24 Eurobond then it would most likely be Wilmington Trust.

25 THE COURT: Okay. I responded very quickly before to

Page 35

1 the objections that I sustained so I'm explaining this ruling  
2 at greater length, Ms. Benjamin, both for you and your dad, Mr.  
3 Benjamin; I see you out there, good morning.

4 What GM has done is it hasn't tried to take away your  
5 distribution on your bonds. What it's saying, in essence, is  
6 that you can't be paid twice. As a bondholder, you're  
7 protected by a document that was executed that you probably  
8 never saw which was called a bond indenture. And under the  
9 law, a trustee, in this case Wilmington Trust, is designated to  
10 go to bat for the bondholders. So, although you filed a proof  
11 of claim for your bonds, strictly speaking you didn't have to.  
12 You didn't have to for two reasons. One, because Old GM had  
13 acknowledged that it owed its bondholders payment on these  
14 bonds and because the indentured trustee even with that  
15 acknowledgement had filed its own proof of claim on behalf of  
16 all of the bondholders. So, you will get a distribution on  
17 your bonds, at least as much as Old GM can afford which I don't  
18 know what the distributions are going to turn out to be,  
19 whether they're fifteen cents, twenty-five cents, thirty cents  
20 on the dollar or something like that which unfortunately is all  
21 that Old GM can afford. But you will get the same amount on  
22 your bonds that all other bondholders are getting as well.

23 Now, the one thing that may or may not have happened  
24 is that I don't know if Wilmington Trust knew your address and  
25 the information for you to get your distribution. And Mr.

Page 36

1 Smolinsky, as a request or as a favor to me, if you could  
2 detail one of your associates or a smart paralegal to help link  
3 Mr. Benjamin up with Wilmington Trust to see that he gets  
4 whatever he should have gotten as part of the distributions.

5 But, Ms. Benjamin, the reason that I'm required to  
6 sustain Old GM's objection and to disallow the second claim is  
7 that your dad is already getting paid once. It's not that  
8 nobody's saying that he can't get paid; it's just that he can't  
9 get paid more than once. Yes.

10 MS. BENJAMIN: He hasn't received any recompense for  
11 this particular bond so far.

12 THE COURT: And that's why I'm asking as a favor to me  
13 that Mr. Smolinsky detail one of his staff to help set up the  
14 lines of communication to see that your dad gets paid.

15 MS. BENJAMIN: Thank you, Your Honor.

16 THE COURT: Very good.

17 Mr. Smolinsky, I appreciate the courtesy that you and  
18 you firm are giving me and to the Davis (sic) family.

19 MR. SMOLINSKY: Of course we will.

20 The next matter, an uncontested matter, debtors' 199th  
21 omnibus objection to claims. We had one response by Dan. He  
22 was a bondholder. He did receive his distributions and he does  
23 not object to the disallowance of his duplicate claim.

24 THE COURT: Sure, I understand.

25 MR. SMOLINSKY: 242nd omnibus objection to claim.

Page 37

1 That's a contingent coliability claim. There was one response  
2 left by Centerpoint, I believe. Yes, Centerpoint. And we have  
3 entered into a consensual order which we'll submit to chambers  
4 disallowing the claim.

5 THE COURT: Sure.

6 MR. SMOLINSKY: That is the remainder of my calendar,  
7 Your Honor. My colleague at Dickstein Shapiro is here to  
8 address the other omnibus objections. There's also a motion  
9 regarding Chartis that may be going forward; I'm not quite  
10 sure.

11 UNIDENTIFIED SPEAKER: A status conference.

12 MR. SMOLINSKY: A status conference, Your Honor.

13 THE COURT: Okay.

14 MR. SMOLINSKY: And, Your Honor, if I leave I have an  
15 11 o'clock matter by Judge Gonzales so I think I'm through with  
16 my calendar.

17 THE COURT: Of course. And anybody who's needs have  
18 already been addressed, including the Benjamin family, is free  
19 to leave too if they want to.

20 Okay. From Dickstein dealing with the creditors'  
21 committee side.

22 MR. BERGER: Good morning, Your Honor. Shaya Berger  
23 from Dickstein Shapiro.

24 THE COURT: Sure. Good morning.

25 MR. BERGER: I will be presenting the Motors

Page 38

1 Liquidation GUC Trust on certain omnibus objections. This  
2 morning we have five omnibus objections. The first omnibus  
3 objection is the 252nd omnibus objections for late filed claims  
4 covering claims that -- claimants that received actual notice.  
5 There were twelve claimants in -- covered by these objections  
6 and we received no response and, therefore, we request that an  
7 order expunging these claims.

8 THE COURT: Yes, Mr. Berger, granted.

9 MR. BERGER: The next omnibus objection is the 253rd  
10 omnibus objection which is also a late filed omnibus  
11 objections. It's covering claimants who were unknown and,  
12 therefore, received constructive notice of the bar date and  
13 filed their claims late. There were thirty-six claims on  
14 our -- on this 253rd omnibus objections. Four claimants  
15 filed -- either filed formal responses or informally responded  
16 to the objection. Those claimants are not going forward.  
17 We're adjourning the objection as to those claims. The other  
18 thirty-two, we are going forward with them and we request that  
19 an order be entered expunging those thirty-two claims.

20 THE COURT: Okay. To the extent you're asking for the  
21 order, it's granted.

22 MR. BERGER: The two -- the next omnibus objection is  
23 the 254th omnibus objection. It is also a late filed omnibus  
24 objection. On this one, there are seven claims that were filed  
25 after the effective date under the confirmation order and there

Page 39

1 have been no responses to that and we request that as to these  
2 seven claims, the 254th omnibus objection be granted and these  
3 claims be expunged.

4 THE COURT: Yes, it is granted. Thank you.

5 MR. BERGER: Your Honor, the next omnibus objection is  
6 the 255th omnibus objection. This omnibus objection covers  
7 claimants that either failed to attach any or insufficient  
8 documentation to support their claims. There were twenty-seven  
9 claimants listed on the exhibit and were covered by this  
10 objection. Two of those claimants responded, again, either  
11 informally or formally filed a response. As to those two  
12 claimants, the order that we will submit to the Court will  
13 not -- will have those claims being adjourned. And as to the  
14 other twenty-five claimants who do not respond, we request that  
15 the order be granted and those claims be expunged.

16 THE COURT: Yes. Granted.

17 MR. BERGER: Thank you, Your Honor.

18 The final omnibus objection is a 256th omnibus  
19 objection. This omnibus objection is to reduce, allow, and  
20 reclassify certain property damage claims. The substance of  
21 the objection is contained in the objection itself. If the  
22 Court would like me to speak to it, I can. However, there were  
23 thirty-seven claims listed on this objection and there were no  
24 responses filed. So, this is an unopposed omnibus objection as  
25 well and we request that an order be granted reducing, allowing

Page 40

1 and reclassifying these thirty-seven claims.

2 THE COURT: You don't need to speak to it further.

3 Motion granted.

4 MR. BERGER: Thank you very much, Your Honor. That's  
5 all we have for today.

6 THE COURT: Okay. Very good.

7 Now, do I have a status conference on the Chartis  
8 controversy?

9 MR. RATNER: Yes. Yes, Your Honor. If I may?

10 THE COURT: Yes, please.

11 MR. RATNER: Scott --

12 THE COURT: Let me get appearances from both sides.

13 MR. RATNER: Scott Ratner of Tovat, Segal & Segal down  
14 this morning as conflicts counsel on behalf of Motors  
15 Liquidation Corporation.

16 THE COURT: Good morning.

17 MR. LEINBACH: Good morning, Your Honor. Brian  
18 Leinbach from Zeichner Ellman & Krause on behalf of the Chartis  
19 entities. And in advance, sorry, I have a bit of a cold today.

20 THE COURT: Okay. Mr. Leinbach, you're from the  
21 Zeichner firm?

22 MR. LEINBACH: I am, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. RATNER: Your Honor, if I may, I'd like to thank  
25 the Court for affording us the opportunity for a brief status

Page 41

1 conference. We thought it would be prudent given the fact that  
2 this claim objection has been pending, next week it will be one  
3 year, and I don't believe the parties have ever appeared before  
4 the Court. Notwithstanding the fact that there have been many  
5 pleadings filed with the Court and extensive discussions and  
6 negotiations have taken place outside the courtroom over the  
7 course of the past year. And, Your Honor, we're here now  
8 because we are in a position and we intend to move forward the  
9 parties with an issue. We've narrowed virtually all of the  
10 issues that were in dispute regarding the claim itself. There  
11 were four originally filed by Chartis and Lexington and other  
12 affiliated insurance companies against a couple of the Old GM  
13 entities. We've narrowed those claim disputes. We've narrowed  
14 the issues regarding the collateral. And currently, we have  
15 one issue in dispute. And that issue concerns an amended proof  
16 of claim that was recently filed by Chartis Lexington and its  
17 affiliated entities and is the subject of a supplemental  
18 amended claim objection which I believe is on the agenda that  
19 appears before the Court today as item number 3.

20 That -- the amended proof of claim was filed on  
21 November 11th by the Chartis Insurance entities. That amended  
22 proof of claim --

23 THE COURT: November 11th, eleven days ago?

24 MR. RATNER: Yes.

25 THE COURT: -- pursuant to the stipulation that was so

Page 42

1 ordered by the Court yesterday.

2 That proof of claim amends and supersedes the four  
3 prior proofs of claim which have been the subject of the  
4 omnibus claim objection that was filed almost a year ago. So,  
5 what we've done through the stipulation and the amended proof  
6 of claim is basically eliminate eighty percent of the issues  
7 that had been in dispute and now we're left with one issue.  
8 That one issue was briefed by the reorganized debtors just  
9 recently. On November 17th, they filed their amended  
10 supplemental objection to the amended proof of claim. And  
11 also, pursuant to stipulation and agreement worked out by the  
12 parties and approved by the Court, on December 1 the claimants  
13 are supposed to file their reply, their reply to the debtors',  
14 the reorganized debtors' response. We think, based on  
15 discussions, that there may be a cross-motion as part of their  
16 reply and the cross-motion would seek to compel arbitration of  
17 the issue in dispute. In the event there is a cross-motion,  
18 the parties had agreed that the reorganized debtors would have  
19 a right to reply and that would -- or respond to the cross-  
20 motion. And our deadline for that would be January 10th. And  
21 the hearing date that's been set, and this is likely to go  
22 forward the hearing as a substantive hearing, is January 18th.

23 Now, the one issue, Your Honor, that I was going to  
24 just note, the one issue in dispute that would be the subject  
25 of the substantive hearing on January 18th, in addition,

Page 43

1 perhaps, to whether or not arbitration is required or  
2 appropriate in this circumstance, the one issue that is in  
3 dispute is the status of the subrogation claim that the  
4 reorganized debtors have now agreed to as to amount. There is  
5 no longer a dispute as to the amount of the subrogation claim  
6 which is 4.5 million. Rather, the dispute concerns the status  
7 of that claim and whether it should be treated as a general  
8 unsecured claim or as a secured claim under the plan.

9 THE COURT: Okay. Before I hand off to Mr. Leinbach,  
10 have you and Mr. Leinbach or your designees agreed on a  
11 schedule for the entirety of the briefing on everything?

12 MR. LEINBACH: This is Bryan Leinbach for the Chartis  
13 entities. Yes, Your Honor, we had spoken yesterday with Togut,  
14 Segal & Segal and we believe we've come up with a briefing  
15 schedule for both; our opposition to their claims objection  
16 and, of course, the cross-motion that we intend to file for  
17 arbitration.

18 THE COURT: Including all replies, Mr. Leinbach?

19 MR. LEINBACH: Yes. My understanding was that  
20 pursuant to the stipulation our opposition date would be  
21 December 1st for their claim objection. We, of course,  
22 anticipate filing a cross-motion to -- a cross-motion to seek  
23 arbitration. Pursuant to that cross-motion, their reply would  
24 be due, of course, December 22nd. With a reply would also be  
25 an opposition to our motion, our cross-motion for arbitration

Page 44

1 and then there would be a reply which we'd agreed upon which we  
2 submit on January 10th in order to make the scheduled January  
3 18th hearing.

4 THE COURT: Um-hum. Mr. Ratner, give Mr. Leinbach the  
5 podium in case he wants to say anything.

6 MR. RATNER: Yes, sir. Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. LEINBACH: Thank you, Your Honor. Bryan Leinbach,  
9 once again, for the Chartis entities. I don't have anything to  
10 add to Mr. Ratner's statement. I also -- that leaves -- there  
11 was one bit of a factual inaccuracy. My understanding is that  
12 the proof of claim was submitted pursuant to the stipulation on  
13 November 8th as opposed to November 11th.

14 THE COURT: All right. Have you guys papered your  
15 deal on the scheduling of the various briefs?

16 MR. LEINBACH: Yes. The actual scheduling of the  
17 briefing is set forth in the stipulation which my understanding  
18 is being submitted for order by the Court today. The only  
19 thing which is not in the stipulation is the January 10th reply  
20 date for our anticipated cross-motion for arbitration.

21 THE COURT: All right. You or Mr. Ratner or somebody  
22 working under either your direction is to send a letter or e-  
23 mail to my chambers that fills out the gaps on anything that  
24 wasn't previously given to us so that we know how to understand  
25 the schedule. If I -- I think I may have approved that -- the

Page 45

1 rest of it already but if I didn't what you guys told me is  
2 fine and just get your briefs in gentlemen.

3 Am I correct that at this point it's just questions of  
4 law and doesn't involve disputed issues of fact?

5 MR. LEINBACH: At this moment, we do not believe that  
6 they're an issue of fact but, of course, we will have to wait  
7 and see once the full briefings are filed with the court.

8 THE COURT: Mr. Ratner, do you agree with him on that?

9 MR. RATNER: Yes. I was going to say ditto, Your  
10 Honor.

11 THE COURT: Okay.

12 MR. RATNER: Have to wait and see.

13 THE COURT: All right. Make it happen, gentlemen.

14 MR. RATNER: Thank you, Your Honor.

15 MR. LEINBACH: Thank you.

16 THE COURT: Thank you. Am I correct that all GM  
17 matters have now been taken care of?

18 Okay. Anybody who is here on GM is free to go. Do I  
19 have anything now other than Park Eastside Properties? Yes,  
20 Ms. Davis (sic).

21 MS. BENJAMIN: May I just give you the letter that was  
22 written to you with the proof of claim?

23 THE COURT: Excuse me; I said Davis, I meant Benjamin.  
24 I apologize. But come on up. I couldn't hear your question.

25 MS. BENJAMIN: May I submit to you the letter with the

Page 46

1 proof -- the confirmation notice for Cecil Benjamin to your  
2 clerk?

3 THE COURT: Sure, if you want to.

4 MS. BENJAMIN: All right. Thank you.

5 THE COURT: Okay. Park Eastside.

6 (Whereupon these proceedings concluded at 10:55 AM)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 47

1

I N D E X

2

RULINGS

3

Page Line

4	Morgenstein Group to prepare stip and	26	12
5	include scheduling		
6	Debtors' 119th omnibus objection granted	26	13
7	Debtors' 121st omnibus objection granted	29	19
8	Debtors' 122nd omnibus objection granted	29	24
9	Debtors' 126th omnibus objection granted	30	3
10	Debtors' 135th omnibus objection granted	30	6
11	Debtors' 137th omnibus objection granted	30	13
12	Debtors' 140th omnibus objection granted	30	20
13	Debtors' 143rd omnibus objection granted	30	23
14	Debtors' 203rd omnibus objection granted	31	1
15	Debtors' 213th omnibus object granted	31	4
16	Debtors' 252nd omnibus objection and order	38	8
17	to expunge claims granted		
18	Debtors' 253rd omnibus objection and order	38	21
19	to expunge thirty-two claims granted		
20	Debtors' 254th omnibus objection and order	39	4
21	to expunge seven claims granted		
22	Debtors' 255th omnibus objection and order	39	16
23	to expunge twenty-five claims granted		
24	Debtors' 256th omnibus object to reduce,	40	3
25	allow and reclassify granted		

Page 48

1

2

C E R T I F I C A T I O N

3

4 I, Ellen S. Kolman, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

6

7 **Ellen S.  
Kolman**

Digitally signed by Ellen S.  
Kolman  
DN: cn=Ellen S. Kolman, c=US  
Date: 2011.11.23 13:51:06 -05'00'

8

9 **Ellen S. Kolman (CET\*\*D-568)**

10 **AAERT Certified Electronic Court Transcriber**

11

12 **Veritext**

13 **200 Old Country Road**

14 **Suite 580**

15 **Mineola, NY 11501**

16

17 **Date: November 23, 2011**

18

19

20

21

22

23

24

25